

# Texas Administrative Code

## TITLE 28 INSURANCE

### PART 2 . TEXAS WORKERS' COMPENSATION COMMISSION

#### CHAPTER 110 REQUIRED NOTICES OF COVERAGE

##### SUBCHAPTER B EMPLOYER NOTICES

#### RULE §110.110 Reporting Requirements for Building or Construction Projects for Governmental Entities

(a) The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates

otherwise. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.

(1) Certificate of coverage (certificate)—A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a workers' compensation coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.

(2) Building or construction—Has the meaning defined in the Texas Labor Code, §406.096(e)(1).

(3) Contractor--A person bidding for or awarded a building or construction project by a governmental entity.

(4) Coverage--Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(5) Coverage agreement--A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Texas Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G, as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

(6) Duration of the project--Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

(7) Persons providing services on the project ("subcontractor" in §406.096 of the Act)--With the exception of persons excluded under subsections (h) and (i) of this section, includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(8) Project--Includes the provision of all services related to a building or construction contract for a governmental entity.

(b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(c) A governmental entity that enters into a building or construction contract on a project shall:

(1) include in the bid specifications, all the provisions of paragraph (7) of this subsection, using the language required by paragraph (7) of this subsection;

(2) as part of the contract, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this section;

(3) obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project;

(4) obtain from the contractor a new certificate of coverage showing extension of coverage:

(A) before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project; and

(B) no later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;

(5) retain certificates of coverage on file for the duration of the project and for three years thereafter;

(6) provide a copy of the certificates of coverage to the commission upon request and to any person entitled to them by law; and

(7) use the language contained in the following Figure 1 for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation: Attached Graphic

(d) A contractor shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

(3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

(4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

(7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes: Attached Graphic

(8) contractually require each person with whom it contracts to provide services on a project to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e)(3) of this section;

(D) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A)-(H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

(e) A person providing services on a project, other than a contractor, shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;

(3) have the following language in its contract to provide services on the project: "By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions."

(4) provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project;

(5) obtain from each person providing services on a project under contract to it, and provide as required by its contract:

(A) a certificate of coverage, prior to the other person beginning work on the project; and

(B) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(6) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(7) notify the governmental entity in writing by certified mail or personal delivery, of any change that materially affects the provision of coverage of any person providing services on the project and send the notice within ten days after the person knew or should have known of the change; and

(8) contractually require each other person with whom it contracts to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to it prior to that other person beginning work on the project;

(C) include in all contracts to provide services on the project the language in paragraph (3) of this subsection;

(D) provide, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person under contract to it to provide services on the project, and provide as required by its contract:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the contract;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each person with whom it contracts, to perform as required by this subparagraph and subparagraphs (A)-(G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

(f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

(g) This rule is applicable for building or construction contracts advertised for bid by a governmental entity on or after September 1, 1994. This rule is also applicable for those building or construction contracts entered into on or after September 1, 1994, which are not required by law to be advertised for bid.

(h) The coverage requirement in this rule does not apply to motor carriers who are required pursuant to Texas Civil Statutes, Article 6675c, to register with the Texas Department of Transportation and who provide accidental insurance coverage pursuant to Texas Civil Statutes, Article 6675c, §4(j).

(i) The coverage requirement in this rule does not apply to sole proprietors, partners, and corporate officers who meet the requirements of the Act, §406.097(c), and who are explicitly excluded from coverage in accordance with the Act, §406.097(a) (as added by House Bill 1089, 74th Legislature, 1995, §1.20). This subsection applies only to sole proprietors, partners, and corporate executive officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

The following text is the attached graphic " that is required by section 110.110(c)(7).

### ***"Attached Graphic"***

Article \_\_\_\_\_. Workers' Compensation Insurance Coverage.

**A. Definitions:**

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.



**Texas Administrative Code**  
**Texas Workers Compensation Commission**

**Workers Compensation Coverage**  
**Subcontractor agreement Forms**

**TWCC 81, TWCC 82, TWCC 83, TWCC 84**

Article \_\_\_\_\_. *Workers' Compensation Insurance Coverage.*

*A. Definitions:*

*Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.*

*Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.*

*Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.*

*B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.*

*C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*

*D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*

*E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*

*(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file*

*certificates of coverage showing coverage for all persons providing services on the project; and*

*(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*

*F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*

*G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.*

*H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*

*I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:*

*(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*

*(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*

*(3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*

*(4) obtain from each other person with whom it contracts, and provide to the contractor:*

*(a) a certificate of coverage, prior to the other person beginning work on the project; and*

*(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate*

TEXAS WORKERS' COMPENSATION COMMISSION  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

AGREEMENT BETWEEN GENERAL CONTRACTOR AND SUBCONTRACTOR  
TO PROVIDE WORKERS' COMPENSATION INSURANCE

Notice of Agreement

The undersigned General Contractor and the undersigned Subcontractor hereby agree that the General Contractor ☐ will withhold ☐ will not withhold the cost of workers' compensation insurance coverage from the Subcontractor's contract price and that, for the purpose of providing workers' compensation insurance coverage, the General Contractor will be the employer of the Subcontractor and the Subcontractor's employees. This agreement makes the General Contractor the employer of the Subcontractor and the Subcontractor's employees only for the purposes of workers' compensation laws of Texas and for no other purpose.

TERM (DATES) OF AGREEMENT: FROM: \_\_\_\_\_  
TO: \_\_\_\_\_

LOCATION OF EACH AFFECTED JOB SITE (OR STATE WHETHER THIS IS A BLANKET AGREEMENT):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ESTIMATED NUMBER OF EMPLOYEES AFFECTED: \_\_\_\_\_

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.

\_\_\_\_\_

General Contractor's Affirmation

If the General Contractor's workers' compensation carrier changes during the effective period of coverage, it is advisable for the General Contractor to file this form with the new insurance carrier.

\_\_\_\_\_ Federal Tax ID Number

Signature of General Contractor \_\_\_\_\_ Date \_\_\_\_\_ Address (Street) \_\_\_\_\_  
Printed Name of General Contractor \_\_\_\_\_ Address (City, State, Zip) \_\_\_\_\_

Subcontractor's Affirmation

\_\_\_\_\_ Federal Tax ID Number

Signature of Subcontractor \_\_\_\_\_ Date \_\_\_\_\_ Address (Street) \_\_\_\_\_  
Printed Name of Subcontractor \_\_\_\_\_ Address (City, State, Zip) \_\_\_\_\_

Four copies of this form must be completed: This agreement must be filed by the General Contractor with both the Texas Workers' Compensation Commission and the workers' compensation insurance carrier of the General Contractor within 10 days of the date of execution. The original must be filed with the Commission. The agreement must be filed by PERSONAL DELIVERY OR REGISTERED OR CERTIFIED MAIL. Failure to file this agreement may result in a fine of up to \$5,000. Both the General Contractor and the Subcontractor must also retain a copy of the agreement.

Commission Date Stamp Here

TEXAS WORKERS' COMPENSATION COMMISSION  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

CHECK ☐ BOX OF STATEMENT THAT APPLIES

☐ AGREEMENT BETWEEN MOTOR CARRIER  
AND OWNER OPERATOR TO PROVIDE  
WORKERS' COMPENSATION INSURANCE COVERAGE

Notice of Declaration

The undersigned Motor Carrier and the undersigned Owner Operator agree that the Motor Carrier will provide workers' compensation insurance coverage to the Owner Operator and the Owner Operator's employees. The Motor Carrier ☐ will deduct ☐ will not deduct the actual premiums, based on payroll, that are paid or incurred by the Motor Carrier for coverage from the contract price or any other amount owed to the Owner Operator by the Motor Carrier.

TERM (DATES) OF AGREEMENT: FROM: \_\_\_\_\_  
TO: \_\_\_\_\_

ESTIMATED NUMBER OF WORKERS AFFECTED: \_\_\_\_\_

☐ AGREEMENT TO REQUIRE OWNER OPERATOR  
TO ACT AS EMPLOYER

Notice of Agreement

The undersigned Motor Carrier and the undersigned Owner Operator agree that the Owner Operator assumes the responsibilities of an employer for the performance of work.

TERM (DATES) OF AGREEMENT: FROM: \_\_\_\_\_  
TO: \_\_\_\_\_

ESTIMATED NUMBER OF WORKERS AFFECTED: \_\_\_\_\_

~~THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.~~

MOTOR CARRIER'S AFFIRMATION

If the Motor Carrier's workers' compensation carrier changes during the effective period of coverage, it is advisable for the Motor Carrier to file this form with the new insurance carrier.

\_\_\_\_\_  
Federal Tax I.D. Number

\_\_\_\_\_  
Signature of Motor Carrier

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address (Street)

\_\_\_\_\_  
Printed Name of Motor Carrier

\_\_\_\_\_  
Address (City, State, Zip)

OWNER OPERATOR'S AFFIRMATION

\_\_\_\_\_  
Federal Tax I.D. Number

\_\_\_\_\_  
Signature of Motor Owner Operator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address (Street)

\_\_\_\_\_  
Printed Name of Owner Operator

\_\_\_\_\_  
Address (City, State, Zip)

Four copies of this form must be completed: This agreement must be filed by the Motor Carrier with both the Texas Workers' Compensation Commission in Austin and the workers' compensation insurance carrier of the Motor Carrier within 10 days of the date of execution. The original must be sent to the Commission. The agreement must be filed by PERSONAL DELIVERY OR REGISTERED OR CERTIFIED MAIL. Both the Motor Carrier and the Owner Operator must also retain a copy of the agreement.

Commission TWCC Date Stamp Here

TEXAS WORKERS' COMPENSATION COMMISSION  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

Texas Workers' Compensation Act, Texas Labor Code, Section 406.141(2) defines "independent contractor" as follows: (2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who: (A) is paid by the job, not by the hour or some other time-measured basis; (B) is free to hire as many helpers as he desires and to determine what each helper will be paid; and (C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

CHECK ☐ BOX OF STATEMENT THAT APPLIES

☐ **JOINT AGREEMENT TO AFFIRM INDEPENDENT  
RELATIONSHIP FOR CERTAIN BUILDING  
AND CONSTRUCTION WORKERS**

Notice of Declaration

The undersigned Hiring Contractor and the undersigned Independent Contractor hereby declare that the Independent Contractor meets the qualifications of an Independent Contractor under Texas Workers' Compensation Act, Texas Labor Code, Section 406.141, that the Independent Contractor is not an employee of the Hiring Contractor, and that:

- (A) the Independent Contractor and the Independent Contractor's employees shall not be entitled to workers' compensation coverage from the Hiring Contractor; and
- (B) the Hiring Contractor's workers' compensation insurance carrier shall not require premiums to be paid by the Hiring Contractor for coverage of the Independent Contractor or the Independent Contractor's employees, helpers, or subcontractors.

THIS DECLARATION TAKES EFFECT UPON RECEIPT BY THE TEXAS WORKERS' COMPENSATION COMMISSION. THIS DECLARATION APPLIES TO ALL HIRING AGREEMENTS EXECUTED BY THE HIRING CONTRACTOR AND THE INDEPENDENT CONTRACTOR DURING THE YEAR AFTER THIS DECLARATION IS FILED UNLESS A SUBSEQUENT HIRING AGREEMENT IS MADE TO WHICH THE DECLARATION DOES NOT APPLY. IN THE EVENT THAT A HIRING AGREEMENT WHERE THIS DECLARATION DOES NOT APPLY IS MADE, THE HIRING CONTRACTOR AND INDEPENDENT CONTRACTOR SHALL SO NOTIFY THE TEXAS WORKERS' COMPENSATION COMMISSION AND THE HIRING CONTRACTOR'S WORKERS' COMPENSATION INSURANCE CARRIER (IF ANY) IN WRITING WITHIN 10 DAYS AFTER THE NON-APPLYING AGREEMENT IS MADE. ONCE THIS AGREEMENT IS SIGNED, THE SUBCONTRACTOR AND THE SUBCONTRACTOR'S EMPLOYEES SHALL NOT BE ENTITLED TO WORKERS' COMPENSATION COVERAGE FROM THE HIRING CONTRACTOR UNLESS A SUBSEQUENT WRITTEN AGREEMENT IS EXECUTED, AND FILED ACCORDING TO COMMISSION RULES, EXPRESSLY STATING THAT THIS AGREEMENT DOES NOT APPLY.

☐ **AGREEMENT TO ESTABLISH EMPLOYER-  
EMPLOYEE RELATIONSHIP FOR CERTAIN  
BUILDING AND CONSTRUCTION WORKERS**

Notice of Agreement

The undersigned Hiring Contractor and the undersigned Independent Contractor hereby agree that the Hiring Contractor ☐ will withhold ☐ will not withhold the cost of workers' compensation insurance coverage from the Independent Contractor's contract price and that the Hiring Contractor will purchase workers' compensation insurance coverage for the Independent Contractor and the Independent Contractor's employees. Once this agreement is signed, for the purpose of providing workers' compensation insurance coverage, the Hiring Contractor will be the employer of the Independent Contractor and the Independent Contractor's employees. This agreement makes the Hiring Contractor the employer of the Independent Contractor and the Independent Contractor's employees only for the purposes of workers' compensation laws of Texas and for no other purpose.

TERM (DATES) OF AGREEMENT: FROM: \_\_\_\_\_

TO: \_\_\_\_\_

LOCATION OF EACH AFFECTED JOB SITE (OR STATE WHETHER THIS IS A BLANKET AGREEMENT):  
\_\_\_\_\_  
\_\_\_\_\_

ESTIMATED NUMBER OF EMPLOYEES AFFECTED: \_\_\_\_\_

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.

Hiring Contractor's Affirmation

If the Hiring Contractor's workers' compensation carrier change during the effective period of coverage, it is advisable for the Hiring Contractor to file this form with the new insurance carrier.

Federal Tax ID Number \_\_\_\_\_

Signature of Hiring Contractor \_\_\_\_\_

Date \_\_\_\_\_

Address (Street) \_\_\_\_\_

Printed Name of the Hiring Contractor \_\_\_\_\_

Address (City, State, Zip) \_\_\_\_\_

Independent Contractor's Affirmation

Federal Tax ID Number \_\_\_\_\_

Signature of Independent Contractor \_\_\_\_\_

Date \_\_\_\_\_

Address (Street) \_\_\_\_\_

Printed Name of the Independent Contractor \_\_\_\_\_

Address (City, State, Zip) \_\_\_\_\_

Four copies of this form must be completed: This agreement must be filed by the Hiring Contractor with both the Texas Workers' Compensation Commission and the workers' compensation insurance carrier of the Hiring Contractor within 10 days of the date of execution. The original must be filed with the Commission. The agreement must be filed by PERSONAL DELIVERY OR REGISTERED OR CERTIFIED MAIL. Both the Hiring Contractor and the Independent Contractor must also retain a copy of the agreement.

Commission Date Stamp Here

TEXAS WORKERS' COMPENSATION COMMISSION  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744

EXCEPTION TO APPLICATION OF JOINT AGREEMENT TO AFFIRM INDEPENDENT  
RELATIONSHIP FOR CERTAIN BUILDING AND CONSTRUCTION WORKERS

NOTICE OF DECLARATION

The undersigned Hiring Contractor and the undersigned Independent Contractor declare that the Joint Agreement to Affirm Independent Relationship for Certain Building and Construction Workers (as recorded on TWCC-83) does not apply to the subsequent hiring agreement between the Hiring Contractor and Independent Contractor. Nothing in this declaration otherwise nullifies the Joint Agreement to Affirm Independent Relationship for Certain Building and Construction Workers as it applies to other hiring agreements made during the term of the joint agreement.

DATE OF JOINT AGREEMENT TO AFFIRM INDEPENDENT  
RELATIONSHIP FOR CERTAIN BUILDING AND CONSTRUCTION  
WORKERS

DATE OF SUBSEQUENT HIRING AGREEMENT TO WHICH THIS  
FORM APPLIES

LOCATION OF SPECIFIC JOB SITES NOT AFFECTED BY JOINT AGREEMENT: \_\_\_\_\_

NAME OF HIRING CONTRACTOR

NAME OF INDEPENDENT CONTRACTOR

Hiring Contractor's Affirmation

If the Hiring Contractor's workers' compensation carrier changes during the effective period of coverage, it is advisable for the Hiring Contractor to file this form with the new insurance carrier.

Federal Tax I.D. Number

Signature of Hiring Contractor

Date

Address (Street)

Printed Name of Hiring Contractor

Address (City, State, Zip)

Independent Contractor's Affirmation

Federal Tax I.D. Number

Signature of Independent Contractor

Date

Address (Street)

Printed Name of Independent Contractor

Address (City, State, Zip)

Four copies of this of this form must be completed: This agreement must be filed by the Hiring Contractor with both the Texas Workers' Compensation Commission and the workers' compensation insurance carrier of the Hiring Contractor within 10 days of the date of execution. The original must be filed with the Commission. The agreement must be filed by PERSONAL DELIVERY OR CERTIFIED MAIL. Both the Hiring Contractor and the Independent Contractor must also retain a copy of the agreement.

Commission Date Stamp Here

# **Texas Government Code**

## **Chapter 2258**

### **Prevailing Wage Rates**



Government Code

CHAPTER 2258. PREVAILING WAGE RATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2258.001. Definitions.

In this chapter:

(1) "Locality in which the work is performed" means:

(A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located, which may include a county, municipality, county and municipality, or district; or

(B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.

(2) "Public body" means a public body awarding a contract for a public work on behalf of the state or a political subdivision of the state.

(3) "Worker" includes a laborer or mechanic.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.002. Applicability of Chapter to Public Works.

(a) This chapter applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.

(b) This chapter does not apply to work done directly by a public utility company under an order of a public authority.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.003. Liability.

An officer, agent, or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing this chapter unless the action was made in bad faith.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

SUBCHAPTER B. PAYMENT OF PREVAILING WAGE RATES

Sec. 2258.021. Right to be Paid Prevailing Wage Rates.

(a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:

(1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and

(2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

(b) Subsection (a) does not apply to maintenance work.

(c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

Added by Acts 1995, 74th

Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 18.01, eff. Sept. 1, 1997.

Sec. 2258.022. Determination of Prevailing Wage Rates.

(a) A public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or

(2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.

(b) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(c) A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.

(d) The public body's determination of the general prevailing rate of per diem wages is final.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 18.02, eff. Sept. 1, 1997.

Sec. 2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty.

(a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.

(b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.

(c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.

(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

(e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.024. Records.

(a) A contractor and subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and

(2) the actual per diem wages paid to each worker.

(b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.025. Payment Greater Than Prevailing Rate Not Prohibited.

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.026. Reliance on Certificate of Subcontractor.

A contractor is entitled to rely on a certificate by a subcontractor regarding the payment of all sums due those working for the subcontractor until the contrary has been determined.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

#### SUBCHAPTER C. ENFORCEMENT; CIVIL AND CRIMINAL PENALTIES

Sec. 2258.051. Duty of Public Body to Hear Complaints and Withhold Payment.

A public body awarding a contract, and an agent or officer of the public body, shall:

(1) take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and

(2) withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.052. Complaint; Initial Determination.

(a) On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred.

(b) A public body must make its determination under Subsection (a) before the 31st day after the date the public body receives the information.

(c) A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

(d) A public body shall retain any amount due under the contract pending a final determination of the violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.053. Arbitration Required for Unresolved Issue.

(a) An issue relating to an alleged violation of Section 2258.023, including a penalty owed to a public body or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the contractor or subcontractor and any affected worker do not resolve the issue by agreement before the 15th day after the date the public body makes its initial determination under Section 2258.052.

(b) If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required under Subsection (a), a district court shall appoint an arbitrator on the petition of any of the persons.

(c) A public body is not a party in the arbitration.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.054. Arbitration Award; Costs.

(a) If an arbitrator determines that Section 2258.023 has been violated, the arbitrator shall assess and award against the contractor or subcontractor:

(1) penalties as provided by Section 2258.023 and this section; and

(2) all amounts owed to the affected worker.

(b) An arbitrator shall assess and award all reasonable costs, including the arbitrator's fee, against the party who does not prevail. Costs may be assessed against the worker only if the arbitrator finds that the claim is frivolous. If the arbitrator does not find that the claim is frivolous and does not make an award to the worker, costs are shared equally by the parties.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.055. Arbitration Decision and Award Final.

The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.056. Payment by Public Body to Worker; Action to Recover Payment.

(a) A public body shall use any amounts retained under this chapter to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing wage rate as provided in the arbitrator's award.

(b) The public body may adopt rules, orders, or ordinances relating to the manner in which a reimbursement is made.

(c) If the amounts retained by a public body under this chapter are not sufficient for the public body to pay the worker the full amount owed, the worker has a right of action against the contractor or subcontractor and the surety of the contractor or subcontractor to recover the amount owed, reasonable attorney's fees, and court costs.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.057. Withholding by Contractor.

(a) A contractor may withhold from a subcontractor sufficient money to cover an amount withheld from the contractor by a public body because the subcontractor violated this chapter.

(b) If the contractor has made a payment to the subcontractor, the contractor may withhold money from any future payments owed to the subcontractor or sue the subcontractor or the subcontractor's surety for the amount withheld from the contractor by a public body because of the subcontractor's violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.

Sec. 2258.058. Criminal Offense.

(a) An officer, agent, or representative of the state or of a political subdivision of the state commits an offense if the person wilfully violates or does not comply with a provision of this chapter.

(b) A contractor or subcontractor of a public work under this chapter, or an agent or representative of the contractor or subcontractor, commits an offense if the person violates Section 2258.024.

(c) An offense under this section is punishable by:

(1) a fine not to exceed \$500;

(2) confinement in jail for a term not to exceed six months; or

(3) both a fine and confinement.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.49(a), eff. Sept. 1, 1995.